EXHIBIT 4

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISRICT OF DELAWARE

In re:	Chapter 7
WINSTAR COMMUNICATIONS, INC., et al.,	Case No. 01-01430(JJF)
	(Jointly Administered)
Debtors.	Hearing Date: April 19, 2002 Time: 10:00 a.m.

OBJECTION OF QWEST CORPORATION TO THE MOTION OF WINSTAR HOLDINGS LLC TO ENFORCE INJUNCTION AGAINST STOPPING SERVICES TO DEBTORS BEFORE CUTOFF DATE

Qwest Corporation ("QC"), by and through its undersigned counsel, hereby objects to the Motion of Winstar Holdings, LLC ("Winstar Holdings") to Enforce Injunction Against Stopping Services to Debtors Before the Cutoff Date (the "Injunction Motion"). In support hereof, QC respectfully represents as follows:

Summary of Argument

1. The Injunction Motion is, in reality, a thinly veiled motion for reconsideration of this Court's ruling of April 15, 2002.[1] Apparently, not happy with the Court's ruling, Winstar Holdings attempts a second bite at the apple to raise arguments which were not made at the April 15 hearing, do not justify injunctive relief and which seek relief that will confer no benefit on these bankruptcy estates.

[1] To the extent that the Court treats the Injunction Motion as a motion reconsideration, QC submits that Winstar Holdings has not met its burden under Rule 9023 of the Bankruptcy Rules. Reconsideration under Rule 9023 of the Federal Rules of Bankruptcy Procedure is an extraordinary remedy in which the movant must do more than simply reargue the facts or the legal arguments raised previously. See, North River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir.1995) (a motion to reconsider must establish: "(1) an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error [of law] or prevent manifest injustice"); Dentsply Int'l., Inc. v. Kerr Mfg. Co., 42 F.Supp.2d 385, 417 (D.Del.1999) ("A motion for reconsideration 'should be granted sparingly and should not be used to rehash arguments already briefed or allow a never-ending polemic between the litigants and the Court.' "); In re Edison Bros., Inc., 268 B.R. 409, (Bankr.,D.Del. 2001). Winstar Holdings has not identified an intervening change in controlling law; (2) the availability of new evidence; or (3) the need to correct clear error of law or prevent manifest injustice. Winstar Holdings is arguing facts which could have, and maybe should have, been argued to this Court on April 15, 2002.

The Motion is simply another attempt by Winstar Holdings to sidestep the express provisions of section 365 of the Bankruptcy Code and allow it to obtain the benefits of contracts which both Winstar Holdings and the Chapter 7 Trustee have determined, at their sole and absolute discretion, to reject.

2. The relief requested by Winstar Holdings in the Injunction Motion would create an anomaly in bankruptcy jurisprudence. Under the Court's April 15 ruling, the Debtors' agreements with QC were rejected, excusing performance by the Chapter 7 Trustee and QC. Under Winstar Holdings' suggested approach, if the Court continued the injunction, QC would be forced to perform, notwithstanding the earlier rejection of the underlying contracts. Therefore, an injunction, regardless of duration, would contradict and thus, undermine section 365(g) of the Bankruptcy Code and the established litany of case law which holds that the effect of rejection and material breach of a contract is to excuse performance by both the debtor and the nondebtor party.

3. If Winstar Holdings is truly concerned with continuing to provide service to the thousand of customers which will be affected by this matter, then it should exercise the readily available legal remedy by simply directing the assumption of the underlying contracts in accordance with section 365 of the Bankruptcy Code.

4 Moreover, the request to enjoin QC until the "Cutoff Date" is illusory and is really a farce because Winstar Holdings is in complete control of establishing and/or manipulating the Cutoff Date. Pursuant to the Management Agreement, the Cutoff Date occurs when the FCC "grants authority to Buyer discontinue service to the customers of the Sellers." What Winstar Holdings has failed to advise this Court is that the FCC will not grant the authority to discontinue service until Winstar Holdings provides notice to those customers of the discontinuance of the service. Because Winstar Holdings has not provided the requisite notice, and has not advised all parties in interest when it will provide the

notice, the Cutoff Date cannot occur. Similarly, there is no requirement in the Sale Order or Management Agreement to compel Winstar Holdings to provide the discontinuation notice. Therefore, the injunction requested by Winstar Holdings can last for an infinite duration and will unduly prejudice QC.

5. Notwithstanding the Injunction Motion, QC has followed, and will continue to follow, the order of this Court placed on the record at the April 15 hearing. Furthermore, QC will work with the Federal Communication Commission to make diligent efforts to ameliorate the problems which were created herein by Winstar Holdings.

The Motion Should Be Denied

6. By the Injunction Motion, Winstar Holdings seeks to enforce the provisions of the Sale Order to compel QC to continue to provide services and facilities despite the fact that the agreements with QC were rejected as of April 18, 2002 by the Chapter 7 Trustee at Winstar Holdings' express direction.

7. The Injunction Motion should fail because this Court lacks subject matter jurisdiction over this matter.

8. Bankruptcy courts have subject matter jurisdiction if the proceeding or matter can be characterized as "arising under" title 11, "arising in" a case under title 11 or "related to" a case under title 11. See Celotex Corp. v. Edwards, 115 S.Ct. 1493, 1498 (1995). A proceeding fitting within any of these three categories is within the bankruptcy court's jurisdiction and, since the third category is the broadest, a court "need only determine 'whether a matter is at least related to the bankruptcy.'" In re Marcus Hook Dev. Park, Inc., 943 F.2d 261, 264 (3d Cir. 1991) (citations omitted).

9. With respect to the "related to" jurisdiction, the Third Circuit stated:

> [t]he test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.

Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir.1984). The Supreme Court endorsed the Pacor test for "related to" proceedings and stated that "a bankruptcy court's 'related to' jurisdiction can not be limitless." Celotex, 115 S.Ct. at 1499.

10. Bankruptcy courts faced with disputes between nondebtor parties which will not affect chapter 11 or 7 cases routinely find a lack of subject matter jurisdiction. See, e.g., Quattrone Accountants, Inc. v. IRS, 895 F.2d 921, 925 (3d Cir. 1989); Matter of Walker, 51 F.3d 562 (5th Cir. 1995); In re Pettibone Corp., 135 B.R. 847 (Bankr. N.D.Ill. 1992); In re John Peterson Motors, Inc., 56 B.R. 588 (Bankr. D. Minn. 1986).

11. Applying the foregoing authorities, this Court lacks subject matter jurisdiction over the instant Injunction Motion because the Injunction Motion fails to satisfy even the broadest defined scope of section 1334(b) jurisdiction under the Pacor test as adopted by the Supreme Court in Celotex. Through the Injunction Motion, Winstar Holdings essentially attempts to have this Court adjudicate a multi-faceted dispute implicating various provisions of the Telecommunications Act of 1996 between nondebtor parties – the outcome of which will have no conceivable effect on the estates being administered in bankruptcy or alter the Debtors' rights, liabilities, options, or freedom of action.

12. Amplifying the Court's lack of subject matter jurisdiction is the fact that the agreements between QC and the Debtors are already rejected. Through the rejection, both Winstar Holdings and the

Chapter 7 Trustee determined that the agreements were not valuable to the estates and that the estates should not retain an interest therein. Since this contested matter will not alter the Debtors' rights, liabilities, options, or freedom of action, this Court lacks subject matter jurisdiction.

The Effect of Rejection

13. Section 365(g) of the Bankruptcy Code addresses the effect of rejection of a contract. In sum, if the contract has not been previously assumed, rejection of the debtor's executory contract constitutes a breach of the contract. See In re Lavigne, 114 F.3d 379, 386-87 (2d Cir. 1997) (citing 11 U.S.C. §§ 365(g)(1); In re Austin Dev. Co., 19 F.3d 1077, 1082-83 (5th Cir.1994).

14. While rejection is treated as a breach, it does not completely terminate the contract. Id.(citing Austin, 19 F.3d at 1082-83); In re Continental Airlines, 981 F.2d 1450, 1459-61 (5th Cir.1993); In re Modern Textile, 900 F.2d 1184, 1191-92 (8th Cir.1990); In re Tri-Glied, Ltd., 179 B.R. 1014, 1017-18 (Bkrtcy.E.D.N.Y.1995); 3 Collier on Bankruptcy (Lawrence P. King, *et al.* eds., 15th ed. 1996) (Collier) §§ 365.09[3] (breach is not termination of contract because, among other reasons, "[i]f rejection terminates the contract ... such termination may have consequences that affect parties other than [the parties] to the contract"); In re Photo Promotion Assoc., 45 B.R. 878, 882 (S.D.N.Y.1985) ("bankruptcy courts as courts of equity, should look with disfavor on contract forfeitures"). See generally Michael T. Andrew, Executory Contracts in Bankruptcy: Understanding "Rejection," 59 U.Colo.L.Rev. 845 (1988) (Andrew)). Thus, "[r]ejection merely frees the estate from the obligation to perform; it does not make the contract disappear." Id. (quoting In re The Drexel Burnham Lambert Group, 138 B.R. 687, 703 (Bkrtcy.S.D.N.Y.1992)).

15. However, it is well-settled that if a breach constitutes a material failure of performance, then the non-breaching party is discharged from all liability under the contract. See In re Cornell & Co.,

Inc. 2000 WL 388838 (Bankr. E.D.Pa. 2000) (citing Seaway Painting, Inc. v. D.L. Smith Co. (Cornell II), 242 B.R. 834, 838 (E.D. Pa. 1999); Slagan v. John Whitman & Associates, 1997 WL 587354, at * 5 (E.D.Pa. Sept. 10, 1997), *reconsideration denied*, 1997 WL 611587 (E.D.Pa. Sept. 26, 1997); See also In re Adler, Coleman Clearing Corp., 247 B.R 51 (Bankr. S.D.N.Y. 1999); In re Wet-Jet Int'l, Inc., 235 B.R. 142, 152 Bankr. D. Mass. 1999); Matter of Thomas, 51 B.R. 653, 656 (Bankr. Fla. 1985); In re Rehbein, 60 B.R. 436, 441 (9th Cir. BAP 1986).

16. As a result, a party that has materially breached a contract may not complain if the other party refuses to perform its obligations under the contract. Id. (citing In re Cornell & Co., Inc. (Cornell I), 229 B.R. 97, 103 (Bankr. E.D.Pa. 1999); Begier v. Price Waterhouse, 1992 WL 236175, at *5 (E.D.Pa. Sept. 14, 1992); United Hospitals, Inc. v. Comprehensive Care Corp., 1991 WL 125902, at *4 (E.D. Pa. June 26, 1991).

17. In this matter, the breach is material because the Chapter 7 Trustee and Winstar Holdings knowingly rejected the QC agreements. Winstar Holdings admitted in the April 15, 2002 hearing that it had no intention of directing the assumption of the QC agreements or of paying the cure amounts so it is manifest that the breach by Chapter 7 Trustee was material. Winstar Holdings is not an innocent party who will be affected by the finding of a material breach. Winstar Holdings had the authority to, and actually directed, the rejection of the QC agreements based upon its own business judgment. Winstar Holdings made a voluntary decision and should accept the consequences of thereof instead of making pleas to this Court to grant extraordinary relief. The policy considerations which support a finding that a rejection is not a material breach are not present in these cases.

18. In addition, if this Court gives credence to Winstar Holdings' argument that the injunction should continue, such a ruling would conflict with clear precedent of the Third Circuit.

19. The Third Circuit, adopting language of the Sixth Circuit, observed that "bankruptcy courts cannot use equitable principles to disregard unambiguous statutory language." U.S. Trustee v. Price Waterhouse, 19 F.3d 138, 142 (3d Cir. 1994); In re Middleton Arms, 934 F.2d at 725 (internal quotations and citations omitted). Requiring QC to continue to provide services under agreements which have been rejected would run afoul of section 365(g) of the Bankruptcy Code and the caselaw interpreting that section, as described above. This Court should follow section 365(g) rather than the provision of a Sale Order which apparently conflicts with the Bankruptcy Code.

Winstar Holdings Has Failed to Meet the Standards for Injunctive Relief

20. It is a " 'basic doctrine of equity jurisprudence that courts of equity should not act ... when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief.' " O'Shea v. Littleton, 414 U.S. 488, 499, 94 S.Ct. 669, 677-678, 38 L.Ed.2d 674 (1974); Morales v. Trans World Airlines, Inc., 112 S.Ct. 2031, 2035, 504 U.S. 374, (1992); Younger v. Harris, 401 U.S. 37, 43-44, 91 S.Ct. 746, 750-751, 27 L.Ed.2d 669 (1971).

21. Here, there has been an adequate remedy at law: Winstar Holdings has had 120 days to direct the Chapter 7 Trustee to assume the agreements with QC. If Winstar Holdings directed the assumption of the agreements and complied with section 365 of the Bankruptcy Code, there would be no need for the injunction because the services would have continued on an uninterrupted basis. Since there has been an adequate remedy at law, and that remedy has existed for the past 120 days, there is no basis for the injunctive relief.

22. Moreover, since Winstar Holdings has waited until after its 120 day period has expired to seek injunctive relief, this Court should not reward Winstar Holdings for its lack of diligence by granting the extraordinary relief it seeks. This Court should find that Winstar Holdings is guilty of

"unclean hands" by waiting for the expiration of a negotiated deadline and after the expiration thereof, seeking an extension through injunctive relief. "[W]hile equity does not demand that its suitors shall have led blameless lives, as to other matters, it does require that they shall have acted fairly and without fraud or deceit as to the controversy in issue." Precision Instrument Mfg. Co. v. Automotive Maint. Mach. Co., 324 U.S. 806, 814-15, 65 S.Ct. 993, 89 L.Ed. 1381 (1945) (quotation marks and citation omitted).

To the Extent Necessary, This Court Should Modify the Injunction

23. To the extent not otherwise modified by this Court's ruling on April 15, 2002, this Court should modify the injunction and/or the Sale Order so that the Sale Order is consistent with this Court's April 15 ruling.

24. The Court has authority, under Fed.R.Civ.Pro. 60(b), to modify its orders. Specifically, Rule 60(b)(5) provides in pertinent part, that on "such terms as are just" a court may "relieve a party" from a judgment or order "where it is no longer equitable" that the judgment or order have "prospective application."

25. The standard to be applied in assessing motions to modify an injunction to adapt to changed conditions, was first articulated in "archaic language" by the Supreme Court in United States v. Swift & Co., 286 U.S. 106, 52 S.Ct. 460, 76 L.Ed. 999 (1932) and reiterated in Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 112 S.Ct. 748, 116 L.Ed.2d 867 (1992). In Rufo, the Supreme Court stated that under Rule 60(b)(5) "a party seeking modification of a consent decree bears the burden of establishing that a significant change in circumstances warrants revision of the decree." Id. at 383, 112 S.Ct. at 760. If that burden is satisfied, the court considers whether the proposed modification is suitably tailored to the changed circumstance. Id.

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26. The Court of Appeals for the Eighth Circuit rearticulated the standards of the Supreme Court's Swift decision:

> Placed in other words, this means for us that modification is only cautiously to be granted; that some change is not enough; that the dangers which the decree was meant to foreclose must almost have disappeared; that hardship and oppression, extreme and unexpected, are significant; and that the movants' task is to provide close to an unanswerable case.

Humble Oil & Refining Co. v. American Oil Co., 405 F.2d 803, 813 (8th Cir.1969).

27. Here, the substantial change in circumstances is the decision by the Chapter 7 Trustee and Winstar Holdings, after 120 days of deliberation, not to assume the agreements with QC. When the Sale Order was approved by this Court, there was a risk of discontinuance of service because Winstar Holdings was new to the case and did not have an opportunity to take control of the assets. The threat was cured by the 120 days provided to Winstar Holdings to direct the assumption or rejection of the QC agreements.

28. Winstar Holdings and the Chapter 7 Trustee voluntarily determined not to accept the benefits of the agreements with QC and this Court authorized QC to terminate services as April 19, 2002, QC submits that there is ample basis to modify this Court's Sale Order to authorize the immediate discontinuation of services.

Waiver of Memorandum of Law

29. Because this Objection presents no novel issues of law, and the authorities relied upon by QC are set forth herein, QC hereby waives the filing of a memorandum in support of this Motion, except that QC reserves the right to file a brief in reply to any response to this Objection and a response to any objection to the Cross-Motion.

WHEREFORE, QC and QCC respectfully requests that:

a. The Court deny the Motion; and

b. The Court grant QC such further relief as may be just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I Carl N. Kunz, III hereby certify that on this 19th day of April, 2002 one true and correct copy of the **Objection of Qwest Corporation to Motion of Winstar Holdings, LLC to Enforce Injunction** was served upon the following individuals in the manner indicated.

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